

Exhibit D

Trials@uspto.gov
571-272-7822

Paper 7
Date: October 26, 2023

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

MICRON TECHNOLOGY, INC., MICRON SEMICONDUCTOR
PRODUCTS, INC., and MICRON TECHNOLOGY TEXAS LLC,
Petitioner,

v.

NETLIST, INC.,
Patent Owner.

IPR2023-00883
Patent 9,318,160 B2

Before PATRICK M. BOUCHER, DANIEL J. GALLIGAN, and
SHEILA F. McSHANE, *Administrative Patent Judges*.

GALLIGAN, *Administrative Patent Judge*.

DECISION
Granting Institution of *Inter Partes* Review
35 U.S.C. § 314
Granting Motion for Joinder
35 U.S.C. § 315(c); 37 C.F.R. § 42.122

IPR2023-00883
Patent 9,318,160 B2

I. DISCUSSION

We instituted *inter partes* review of U.S. Patent 9,318,160 B2 (“‘160 patent”) in IPR2022-01427 (“1427 IPR”) based on a petition filed by Samsung Electronics Co., Ltd. (“Samsung”). 1427 IPR, Papers 1, 13. In this proceeding, Micron Technology, Inc., Micron Semiconductor Products, Inc., and Micron Technology Texas LLC (collectively “Petitioner”) concurrently filed a Petition (Paper 2, “Pet.”) and a Motion for Joinder (Paper 3) seeking to be joined as a petitioner in the 1427 IPR.¹ Petitioner represents that Samsung, the petitioner to the 1427 IPR, does not oppose joinder. Motion 2. Patent Owner did not file an opposition to the Motion.

The statute governing *inter partes* review joinder states the following:

JOINDER.—If the Director institutes an *inter partes* review, the Director, in his or her discretion, may join as a party to that *inter partes* review any person who properly files a petition under section 311 that the Director, after receiving a preliminary response under section 313 or the expiration of the time for filing such a response, determines warrants the institution of an *inter partes* review under section 314.

35 U.S.C. § 315(c).

The time for filing a preliminary response to the Petition has expired, and Patent Owner did not file one. *See* 37 C.F.R. 42.107(b) (“The preliminary response must be filed no later than three months after the date of a notice indicating that the request to institute an *inter partes* review has

¹ Although Petitioner requests that we “join this IPR with the [1427] IPR” (Motion 2), the joinder statute does not permit this. *See Facebook, Inc. v. Windy City Innovations, LLC*, 973 F.3d 1321, 1335 (Fed. Cir. 2020) (“[W]e hold that the clear and unambiguous meaning of § 315(c) does not authorize joinder of two proceedings . . .”). Thus, we treat Petitioner’s Motion for Joinder as a request to be joined as a petitioner to the 1427 IPR, and, for the reasons discussed herein, we grant that request.

IPR2023-00883
Patent 9,318,160 B2

been granted a filing date.”); Paper 4 (filing date notice entered on May 25, 2023).

The standard for instituting an *inter partes* review is set forth in 35 U.S.C. § 314(a), which provides that an *inter partes* review may not be instituted unless the information presented in the Petition and the Preliminary Response shows “there is a reasonable likelihood that the petitioner would prevail with respect to at least 1 of the claims challenged in the petition.”

Petitioner represents that the Petition “is substantively identical to” the petition in the 1427 IPR. Motion 1. Petitioner presents the following grounds in this Petition, which are identical to the instituted grounds in the 1427 IPR:

Claim(s) Challenged	35 U.S.C. §	Reference(s)/Basis
1–20	103(a)	Kim, ² Rajan, ³ Wyman ⁴
1–20	103(a)	Riho, ⁵ Rajan, Riho ²⁶

Pet. 3; *see* 1427 IPR, Paper 13 at 5, 28 (identifying same grounds and instituting *inter partes* review). The patentability challenges in the 1427 IPR met the “reasonable likelihood” standard of § 314(a). 1427 IPR, Paper 13 at 28.

We determine that Petitioner has demonstrated a reasonable likelihood of prevailing with respect to at least one challenged claim of the ’160 patent

² US 2011/0103156 A1, published May 5, 2011 (Ex. 1014).

³ US 8,041,881 B2, issued Oct. 18, 2011 (Ex. 1015).

⁴ US 7,969,192 B2, issued June 28, 2011 (Ex. 1017).

⁵ US 2011/0026293 A1, published Feb. 3, 2011 (Ex. 1016).

⁶ US 2010/0195364 A1, published Aug. 5, 2010 (Ex. 1018).

IPR2023-00883
Patent 9,318,160 B2

for the reasons given in the institution decision in the 1427 IPR and that the Petition warrants institution. *See* 1427 IPR, Paper 13 at 12–28.

As discussed above, Petitioner’s Motion is unopposed by Samsung and Patent Owner. Petitioner argues that, if joinder is granted, it will take an “understudy” role and would only assume a primary role if Samsung ceases participation in the proceeding. Motion 6–9. In the “understudy” role, Petitioner represents, among other things, that it “will not be making any substantive filings,” that it “agrees to be bound by all filings by Samsung . . . except for filings regarding termination and settlement,” and that it “will not cross-examine or defend any witness at deposition.” Motion 7–8. We have reviewed the Motion, and we determine that it is appropriate under these circumstances to join Petitioner as a party to the 1427 IPR.

II. ORDER

Accordingly, it is

ORDERED that, pursuant to 35 U.S.C. § 314(a) and 37 C.F.R. § 42.4, an *inter partes* review is hereby instituted on the challenges raised in the Petition;

FURTHER ORDERED that Petitioner’s Motion for Joinder with IPR2022-01427 is *granted*, and Petitioner is hereby joined as a petitioner to IPR2022-01427;

FURTHER ORDERED that Petitioner’s role in IPR2022-01427 shall be limited as stated by Petitioner in the Motion for Joinder (Paper 3 at 6–9) unless and until Samsung is terminated from that proceeding;

IPR2023-00883

Patent 9,318,160 B2

FURTHER ORDERED that the case caption in IPR2022-01427 shall be changed to reflect joinder of Petitioner in accordance with the attached example;

FURTHER ORDERED that a copy of this Decision be entered into the record of IPR2022-01427; and

FURTHER ORDERED that all further filings shall be made in IPR2022-01427.

IPR2023-00883

Patent 9,318,160 B2

PETITIONER:

Matthew Hopkins

mhopkins@winston.com

PATENT OWNER:

Hong Zhong

hzhong@irell.com

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

SAMSUNG ELECTRONICS CO., LTD, MICRON TECHNOLOGY, INC.,
MICRON SEMICONDUCTOR PRODUCTS, INC., and
MICRON TECHNOLOGY TEXAS LLC,⁷
Petitioner,

v.

NETLIST, INC.,
Patent Owner.

IPR2022-01427
Patent 9,318,160 B2

⁷ Micron Technology, Inc., Micron Semiconductor Products, Inc., and Micron Technology Texas LLC filed a motion for joinder and a petition in IPR2023-00883 and have been joined as petitioners to this proceeding.